IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/09/2004

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The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mr.Justice AR.RAMALINGAM

C.M.A.No.1582 of 1998

Pallavan Transport Corporation Ltd,
rep. by its Managing Director,
Madras-2. ... Appellant

-Vs-

V.P.Jaleel. ... Respondent

This Civil Miscellaneous Appeal is filed against the award and decree dated 24.11.1997 made in M.A.C.T.O.P.No.1902 of 1992 on the file of Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Madras..

!For Appellant : Mr.M.Krishnamoorthy

^For Respondent : Mr.R.Mohan.

:J U D G M E N T

(Judgment of the Court was made by V.KANAGARAJ,J.)
The Transport Corporation has preferred this Civil Miscellaneous Appeal, challenging the award passed by the Tribunal below, questioning the liability, quantum of compensation and the rate of interest.

2. The respondent/claimant who had sustained grievous injuries in an accident took place on 11.10.1991 has laid a claim petition for compensation before the Motor Accidents Claims Tribunal for a sum of Rs.4,00,000/- on various heads. The learned Tribunal, after analysing both the oral and documentary evidence, has arrived at a conclusion that the accident took place only on account of the rash and negligent driving of the vehicle by the driver of the appellant Corporation and has awarded a sum of Rs.1,30,500/- as compensation payable by the appellant to the respondent/claimant. Aggrieved by the said award, the appellant Transport Corporation has come forward to prefer this Civil Miscellaneous Appeal.

3. Heard the learned counsel for both and perused the materials placed on record.

4. The main contention of the learned counsel for the appellant is that the the accident took place on account of the rash and negligent driving of the Motor Cycle by the respondent/claimant and hence he is also responsible for the accident and as such the appellant is not liable to pay compensation to the respondent/claimant as awarded by the Motor Accidents Claims Tribunal; that without considering the plea of the appellant in respect of contributory negligence the Motor Accidents Claims Tribunal has arrived at the erroneous conclusion that the accident took place only on account of the rash and negligent driving of the vehicle by the driver of the appellant Corporation.

5. The further contention of the learned counsel for the appellant is that the quantum of compensation awarded by the Tribunal is excessive and and exorbitant; that since the petitioner is alleged to have partner of the business he could not have sustained any loss of earning during the period of his treatment and also he could not have any loss of future earning power and as such the quantum of compensation awarded under those heads are not sustainable in law and hence he would pray to set aside the award passed by the Motor Accidents Claims Tribunal.

6. On the other hand, the learned counsel for the respondent would contend that the claimant met with an accident on 11.10.1991 and he has sustained fracture on the left leg, neck; that the said accident was occurred on account of the rash nt driving of the vehicle by the driver of the appellant Corporation. He would further submit that the claimant was treated as in-patient from 11.10.1991 to 29.10.1991 at Kaliyappa Hospital, Chennai; that he was operated upon his left leg and a steel plate has been fixed on his left leg to set right the bone fracture;k that thereafter he was treated as in-patient at Malar Hospital, Chennai; that the claimant is an Income Tax Assessee and he has been paying Income Tax; that on account of the accident he is not able to move out and concentrate his business activities; that he has sustained loss of earning for the period from 11.10.1991 to 10.10.1992 and even thereafter he is not able to attend to his normal duties; that even according to Ex.P.28 the disability certificate issued by P.W.4 Doctor, the claimant has sustained permanent disability to an extent of 35% and therefore he could not attend to his normal duties in future; that a sum of Rs.18,000/- towards loss of earning for one year from 11.10.1991 to 10.10.1992 and a sum of Rs.60,0 00/- as awarded by the Tribunal towards disability and loss of future earning power are sustainable in law and hence would pray to dismiss the above appeal.

7. A perusal of the materials placed on record would reveal that in full consideration of the oral and documentary evidence placed before him, the learned Tribunal has arrived at the correct conclusion that the accident took place only on account of the rash and negligent driving of the vehicle by the driver of the appellant Corporation and hence this Court is not inclined to interfere with the said finding of the Tribunal below.

8. In so far as the quantum of compensation awarded by the learned Tribunal is concerned, it is seen from the award that the learned Tribunal has awarded a sum of Rs.1,30,500/- as against the claim of

Rs.4,00,000/-, out of which sum of Rs.40,500/- towards medical expenses, a sum of Rs.18,000/- towards loss of earning from 11.10.1991 to 10 .10.1992, a sum of Rs.10,000/- for pain and suffering, a sum of Rs.60,000/- towards loss of future earning power and disability.

9. It is also seen from the documents placed on record, the respondent/claimant had sustained fracture on the left leg, neck and he was treated as in-patient for 19 from 11.10.1991 to 29.10.1991 at Kaliyappa Hospital, Chlennai and thereafter at Malar Hospital, Chennai. Even according to Ex.P.28 the disability certificate issued by P.W.4 Doctor, the claimant has sustained permanent disability to an extent of 35% and therefore he could not attend to his normal duties in future. Considering the said oral and documentary evidence, the Tribunal has correctly arrived at a conclusion to award a sum of Rs.18,000/- towards loss of earning for the 12 months from 11.10.1991 to 10.10.1 992 at Rs.1500/- per month and a sum of Rs.60,000/- towards loss of future earning power and disability and hence, this Court is of the view that there is no warranting circumstances to interfere with the said finding arrived at by the Tribunal below a nd it is only desirable to confirm the same and hence the following decision.

In result,
(i) this Civil Miscellaneous Appeal fails and the same is dismissed.

(ii) the award and decree dated 24.11.1997 made in M.A.C.T.O.P.No.1 902 of 1992 by the Court of Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Madras is hereby confirmed;
(iii) however, in the circumstances of the case, there shall be no order as to costs.

Index:Yes
Internet:Yes

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To

The Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Madras.

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